

**PCA MICROSYSTEMS, INC.****CONTRACT NO. V101-(93)-P-1275****VABCA-4549****VA CENTRAL OFFICE  
WASHINGTON, D.C.**

*Jesse R. Castillo, Esq.*, Castillo & Nieto, San Antonio, Texas, for the Appellant.

*Jeanne Anderson, Esq.*, Trial Attorney; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

**OPINION BY ADMINISTRATIVE JUDGE PULLARA**

This appeal was taken from a final decision of a Contracting Officer (CO) for the Department of Veterans Affairs ("VA" or "Government") denying a certified claim by PCA Microsystems, Inc. ("PCA" or "Contractor") in the amount of \$84,256. That sum represented payment for eight months of Fiscal Year (FY) 1994 maintenance services at the Contract SCHEDULE price of \$1 per unit per month for 10,532 of 16,742 Video Display Terminals (VDT's) procured by VA from the Contractor under the subject Contract. VA had paid \$49,680 (8 months times \$1 per unit per month times 6,210 VDT's) for the minimum ordering quantity of 6,210 VDT's. The CO denied the Contractor's claim for maintenance services on the other 10,532 VDT's during that period on the basis that "this was an Indefinite Quantity/Indefinite Delivery type contract with delivery orders processed on an as-needed basis" and that VA had met the terms of the Contract by ordering maintenance services for the 6,210 VDT's during FY 1994.

In addition to the FY 1994 claim, the Contractor, in its Notice of Appeal to this Board and in its Complaint, also sought additional payment at the Contract unit prices for all unordered maintenance services during FY's 1995, 1996 and 1997 relative to all 16,742 VDT's purchased by VA.

Essentially, Appellant views that portion of the Contract dealing with services as being an eighty-four month requirements contract, whereas the Government contends that it was an indefinite quantity contract, with respect to both supplies and services.

The evidentiary record includes the Rule 4 File, tabs 1-22 and 500-23, and the single volume hearing transcript (tr. 1-233).

**FINDINGS OF FACT**

On June 13, 1989, VA issued Request for Proposal (RFP) No. 101-26-89 for the supply of Video Display Terminals (VDT's). (R4, tab 22; tr. 5) The project was described in detail in SECTION C, DESCRIPTION/SPECIFICATIONS/WORK STATEMENT, C.1., MANDATORY SPECIFICATIONS - VIDEO DISPLAY TERMINALS, Introduction, as follows:

The Veterans Health Services & Research Administration (VHS&RA) in the Department of Veterans Affairs (VA) operates the largest centrally administered health care delivery system in the nation. This includes 172 medical centers, approximately 220 outpatient facilities and a variety

of other activities including nursing homes and domiciliaries to serve the veteran population. In order to improve present health care and medical information processing, the VA has installed computers and applications written in ANSI MUMPS at its medical centers. The purpose of this Request for Proposal (RFP) is for the procurement of Video Display Terminals to meet the needs of the Decentralized Hospital Computer Program (DCHP). The targeted usage of these devices is to support and to satisfy the requirements for the PAID, Quality Assurance, ISMS and other enhanced applications.

The VA guarantees to purchase a minimum of 6,210 units within 150 days of the contract award with the option to purchase up to a maximum of an additional 33,000 units over a 24 month period from the date of award.

(R4, tab 2)

In addition to the supply of VDT's, the Solicitation, Section C.8, MAINTENANCE, included requirements for maintenance services. It was the Contractor's responsibility to provide maintenance (labor, parts and travel) at scheduled prices after the warranty period expired. "The Government required maintenance for all hardware" and it was "mandatory that the offeror propose to provide the required maintenance for all equipment items offered." It was the Government's responsibility to assure that its personnel would "not perform maintenance or attempt repairs to equipment while the equipment is under the purview of this contract, unless agreed to by the Contractor." (R4, tab 2, Paragraphs C.8.1 and C.8.2) The maintenance section also provided as follows:

#### C.8.4. Maintenance Options Required

##### C.8.4.1.

A written Delivery Order issued by the Government shall be the only basis for establishing maintenance coverage . . . . The Contractor shall confirm receipt. . . .

##### C.8.4.2

Maintenance service shall commence on a mutually agreed date which shall be written into the Delivery Order. Maintenance service shall not be made effective, prior to the expiration of any applicable maintenance warranty period. Maintenance shall not extend beyond the end of the then current Fiscal Year without a written renewal from the Government.

#### C.8.9.2. Maintenance coverage

C.8.9.2.1 The Contractor shall honor orders for maintenance under any of the maintenance options set forth in Section C for periods of one (1) year or less at the prices shown in Section B. All equipment which is a part of the system delivered under this contract shall be covered by the same maintenance provisions.

(R4, tab 2)

Although all supplies and services that might eventually be purchased were to be priced by bidders and included in the overall evaluation for contract award by the Government, only the minimum quantity of 6,210 VDT's was to be initially ordered, as set forth in Section M, EVALUATION FACTORS FOR AWARD.

The procedures and options for ordering supplies and services were set forth in Section I, CONTRACT CLAUSES, as follows:

#### I.4 52.216-18 ORDERING (APR 1984)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the schedule. Such orders may be issued from *date of award of contract* through *24 months after award*.

#### I.5 52.216-22 INDEFINITE QUANTITY (APR 1984)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering Clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(R4, tab 2) (Emphasis in original).

Bid prices were to be included in a schedule set forth in the solicitation, PART I - THE SCHEDULE, SECTION B, SUPPLIES OR SERVICES AND PRICES/COSTS, as follows:

This will be an Indefinite Quantity type contract with delivery orders processed on an as needed basis for delivery to any of the sites listed in Attachment III. The VA guarantees to purchase a minimum of 6,210 video display terminals within 150 days of the contract award with the option to purchase up to a maximum of an additional 33,000 over a 24 month period from date of award.

<i>HARDWARE</i>				<i>UNIT</i>
<i>CLIN</i>	<i>ITEM DESCRIPTION</i>	<i>QUANTITY</i>	<i>UNIT</i>	<i>PRICE</i>
0001		6,210	EA	

	(minimum)	
1001	33,000 (optional)	EA
<u>MAINTENANCE</u>		
0002	6,210 (minimum)	EA/MO
2001	33,000 (optional)	EA/MO

\* \* \* \* \*

Warranty Offered: \_\_\_\_\_

(R4, tab 22)

The term of the Contract was addressed in Section F, DELIVERIES OR PERFORMANCE, and Section I, CONTRACT CLAUSES, as follows:

## F.2 TERM OF CONTRACT

Although the Government contemplates use of the hardware for the systems life of 84 months from date of award, the term of this contract is from date of award through September 30, 1989, or if award is delayed beyond September 30, 1989 the base year shall run through September 30, 1990.

### I.11.1 *OPTION TO EXTEND THE TERM OF THE CONTRACT*

(FIRMR 201-32.205-3(h), APR 1984)

This contract is renewable at the prices stated elsewhere in this contract, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor by the first day of each fiscal year of the Government or within 30 days after funds for that fiscal year become available, whichever date is the later; provided that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least 30 days before this contract is to expire. Such a preliminary notice of intent to renew shall not be deemed to commit the Government to renewals. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed 84 months.

(R4, tab 2)

After receipt of the RFP, Preston Clancey, a principal of PCA and the project manager for this Contract, telephoned a VA Contracting Officer, seeking to have "some assurance that, that the intent of the Government -- which is -- the way we interpreted it was that it was definitely going to include maintenance for the life cycle system terminals, and that that would be maintained." (Tr. 16, 20 and 25) In other words, Mr. Clancey sought a promise that all maintenance would eventually be ordered. That did not occur. Mr. Clancey was told by the Contracting Officer that "she couldn't really proceed any further, that it would be unfair to some of the other bidders; that questions needed to be submitted formally, and then all of the bidders would have the opportunity to see the questions and the answers; so, she sort of cut me off a little bit on my quizzing." (Tr. 60-61) We have reviewed all of